

OCT 3 2005

BEFORE THE FEDERAL ELECTION COMMISSION

RECEIVED  
FEDERAL ELECTION  
COMMISSION  
SECRETARIAT

2005 OCT -3 P 4:17

**SENSITIVE**

In the Matter of )

MUR 5667 )

BUCHANAN FOR PRESIDENT, INC )

CASE CLOSURE UNDER THE  
ENFORCEMENT PRIORITY SYSTEM

**GENERAL COUNSEL'S REPORT**

The Office of General Counsel has scored MUR 5667 as a low-rated matter. Under the Enforcement Priority System, matters that are low-rated and are deemed inappropriate for review by the Alternative Dispute Resolution Office are forwarded to the Commission with a recommendation for dismissal. The Commission has determined that pursuing low-rated matters compared to other higher rated matters on the Enforcement docket warrants the exercise of its prosecutorial discretion to dismiss these cases.

In addition to being low-rated the Office of General Counsel has also determined that the majority of the alleged activity in this case took place over five years ago. In *Federal Election Commission v. Williams*, 104 F.3d 237 (9<sup>th</sup> Cir. 1996), *cert. denied*, 522 U.S. 1015 (1997), the United States Court of Appeals for the Ninth Circuit held, *inter alia*, that the five-year statute of limitations for filing a suit to enforce a civil penalty found in 28 U.S.C. § 2462 applied not only to judicial proceedings to enforce civil penalties already imposed, but also to proceedings seeking the imposition of these penalties, including the Commission's law enforcement suits under 2 U.S.C. § 437g(a)(6).

Thus, in reviewing both the merits and the procedural posture of MUR 5667, and in furtherance of the Commission's priorities and resources relative to other pending matters on the Enforcement docket, the Office of General Counsel believes that the Commission should

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exercise its prosecutorial discretion and dismiss the matter. *See Heckler v. Chaney*, 470 U.S. 821 (1985).


**RECOMMENDATION**

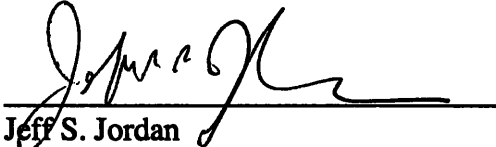
The Office of General Counsel recommends that the Commission dismiss MUR 5667, close the file effective two weeks from the date of the Commission vote, and approve the appropriate letters. Closing the case as of this date will allow CELA and General Law and Advice the necessary time to prepare the closing letters and the case file for the public record.

James A. Kahl  
Deputy General Counsel

10/3/05  
Date

BY:

  
Gregory R. Baker  
Special Counsel  
Complaints Examination  
& Legal Administration

  
Jeff S. Jordan  
Supervisory Attorney  
Complaints Examination  
& Legal Administration

Attachment:  
Narrative in MUR 5667

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5 **MUR 5667**  
6

7 **Complainant:** Mark Rendina  
8  
9

10 **Respondents:** Georgia Herberg  
11 Mark T. Clausen  
12 Buchanan for President, Inc  
13 Buchanan Foster, Inc (FKA Committee to Elect Patrick J.  
14 Buchanan)  
15 Angela Buchanan  
16

17 **Allegations:** The complainant alleges that respondent, Mark Clausen, made in-kind  
18 contributions in the form of legal advice and assistance to the respondent, Buchanan for  
19 President, Inc., during the 2000 presidential election campaign. Additionally, the  
20 Committee allegedly received excessive contributions in the form of internet domain  
21 names that were never reported to the Commission. The complainant notes that the  
22 representation provided by Mr. Clausen stemmed over the complainant's company's  
23 ownership of domain names, one of which happened to be "BuchananFoster.com".  
24

25 **Responses:** The respondent, Mark Clausen, claims that the complaint stems from the  
26 complainant's loss in an intellectual property suit over the domain names involving the  
27 Buchanan campaign. Mr. Clausen claims that he initially represented the Committee as a  
28 volunteer. Subsequently, the Committee hired Mr. Clausen as an attorney.  
29 Mr. Clausen's status as a volunteer for the Committee at the initial stages of the action to  
30 transfer the domain names was confirmed by the response submitted by Angela  
31 Buchanan. Moreover, Mrs. Buchanan noted that she did not authorize any disbursements  
32 concerning the prosecution of the domain action sought by Mr. Clausen.  
33

34 **Office of General Counsel Notation:** It appears from the complaint that the voluntary  
35 representation of the Committee by Mr. Clausen began on or after August 25, 2000 and  
36 continued through October 4, 2000. The complainant contends that on or after October 5,  
37 2000, Mr. Clausen was formally retained by the Committee and compensated for his  
38 representation.  
39

40 **Date complaint filed:** June 29, 2005  
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42 **Date last response received:** August 18, 2005  
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